

1999-2000 FISCAL YEAR ANNUAL REPORT
INDIANA JUDICIAL NOMINATING COMMISSION
COMMISSION ON JUDICIAL QUALIFICATIONS

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The Indiana Judicial Nominating Commission and the Indiana Commission on Judicial Qualifications is a seven-member commission established by Article VII, Section 9, of the Constitution of Indiana. It performs two distinct functions within the judiciary. The Nominating Commission solicits and interviews candidates to fill vacancies on the Supreme Court, the Court of Appeals, and the Tax Court. The Nominating Commission selects three candidates for each vacancy, and the Governor appoints one of the nominees to fill the vacancy. Also, the Nominating Commission certifies former judges as Senior Judges to help Indiana courts with their demanding caseloads.

The Qualifications Commission investigates allegations of ethical misconduct against Indiana judges, judicial officers, and candidates for judicial office, and, when appropriate, prosecutes misconduct cases which ultimately are resolved by the Supreme Court. Additionally, the Commission or its staff offers informal or written advisory opinions about judicial ethics.

The Chief Justice of Indiana, the Honorable Randall T. Shepard, is the *ex officio* Chairman of the Commission. Other Commission members serving in fiscal year 1999-2000 were Charles Berger, Esq., Evansville; Linda K. Henderson, Bedford; Karl Mulvaney, Esq., Indianapolis; Benton Marks, Indianapolis; Daniel Roby, Esq., Fort Wayne; and Anne Faherty, South Bend. New members in 2000 are Terrance Smith, Esq., Highland, and Ann Borne, Fort Wayne. In Fiscal Year 1999-2000, the Commission met in Indianapolis on thirteen occasions.

Four appellate court vacancies occurred in fiscal year 1999-2000. In September 1999, the Commission interviewed twenty-five applicants, then six semi-finalists for the vacancy on the Indiana Supreme Court which was created by the resignation of Justice Myra Selby. The Commission nominated Judge Robert D. Rucker, Indiana Court of Appeals; Judge Nancy H. Vaidik, Porter Superior Court 4; and Indianapolis attorney Mary

Beth Ramey. Governor O'Bannon appointed the Honorable Robert D. Rucker to the Supreme Court in October 1999.

In December 1999, the Commission interviewed fourteen applicants, then six semi-finalists, for the vacancy on the Fourth District of the Court of Appeals, which was created by Justice Rucker's elevation to the Supreme Court. The Commission nominated South Bend attorney Michael P. Barnes; Judge David P. Matsey, Starke Circuit Court; and Judge Nancy H. Vaidik, Porter Superior Court 4. In January 2000, the Governor appointed Judge Nancy H. Vaidik to the Court of Appeals.

In February 2000, the Commission interviewed fourteen applicants, then six semi-finalists, for two vacancies on the Third District Court of Appeals which were created by the retirements of Judge William I. Garrard and Judge Robert H. Staton. To succeed Judge Garrard, the Commission nominated South Bend attorney Michael P. Barnes, Judge Paul D. Mathias of the Allen Superior Court, and Judge David P. Matsey of the Starke Circuit Court. Governor O'Bannon appointed Judge Paul D. Mathias in April 2000. Subsequently, the Commission nominated South Bend attorney Michael P. Barnes, Judge Jeffery J. Dywan of the Lake Superior Court, Civil Division, and Judge David P. Matsey of the Starke Circuit Court to succeed Judge Staton. The Governor appointed Michael P. Barnes in April 2000.

Also in fiscal year 1999-2000, the Nominating Commission certified eight former judges as Senior Judges, and recertified sixty-three Senior Judges.

In fiscal year 1999-2000, the Judicial Qualifications Commission docketed two hundred thirty-one complaints or allegations of judicial misconduct. One hundred eighty-three complaints, or about eighty percent, were summarily dismissed as not raising well-founded issues of ethical misconduct or as outside the Commission's purview. Additionally, thirty-three investigations or formal disciplinary actions were resolved in fiscal year 1999-2000. Eight investigations ultimately were dismissed by the Commission with findings of no misconduct. In twenty instances, judges received private cautions from the Commission. In two instances, the Commission and the judges agreed to the issuance by the Commission

of Public Admonitions in lieu of formal disciplinary proceedings. *Admonition of the Honorable James Funke, Jr., Jennings Superior Court*, July 8, 1999; *Admonition of the Honorable Fredrick R. Spencer, Madison Circuit Court*, December 28, 1999. The Supreme Court also resolved three formal disciplinary proceedings in fiscal year 1999-2000. In *Matter of Johnson*, 715 N.E.2d 370 (Ind. 1999), the Court imposed a Public Reprimand; in *Matter of Jacobi*, 715 N.E.2d 873 (Ind. 1999), the Court suspended the judge for three days without pay; and in *Matter of Bybee*, 716 N.E.2d 957 (Ind. 1999), the Court imposed a Public Reprimand.

Throughout Fiscal Year 1999-2000, the Commission and its counsel were available to judges and candidates to help them resolve their ethical dilemmas. Counsel responded to over three hundred requests for advice from judges and judicial candidates. She participated in panel discussions about judicial ethics, and represented the Commission at the annual meeting of the Association of Judicial Disciplinary Counsel.